

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 11, 2016

AMENDED IN SENATE MARCH 15, 2016

SENATE BILL

No. 824

Introduced by Senator Beall

January 7, 2016

An act to amend Section 75230 of, and to add Section 75231 to, the Public Resources Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 824, as amended, Beall. Low Carbon Transit Operations Program.

Existing law requires all moneys, except for fines and penalties, collected by the State Air Resources Board from the auction or sale of allowances as part of a market-based compliance mechanism relative to reduction of greenhouse gas emissions to be deposited in the Greenhouse Gas Reduction Fund.

Existing law continuously appropriates specified portions of the annual proceeds in the Greenhouse Gas Reduction Fund to various programs, including 5% for the Low Carbon Transit Operations Program, for expenditures to provide transit operating or capital assistance consistent with specified criteria. Existing law provides for distribution of available funds under the program by a specified formula to recipient transit agencies by the Controller, upon approval of the recipient transit agency's proposed expenditures by the Department of Transportation.

This bill would require a recipient transit agency to demonstrate that each expenditure of program moneys allocated to the agency does not supplant another source of funds. The bill would authorize a recipient transit agency that does not submit an expenditure for funding under the program in a particular fiscal year to retain its funding share for expenditure in a subsequent fiscal year for a maximum of 4 years. The bill would allow a recipient transit agency to loan or transfer its funding share in any particular fiscal year to another recipient transit agency within the same region, or to apply to the department to reassign, to other eligible expenditures under the program, any savings of surplus moneys from an approved and completed expenditure under the program or from an approved expenditure that is no longer a priority, as specified. The bill would also allow a recipient transit agency to apply to the department for a letter of no prejudice for any eligible expenditures under the program for which the department has authorized a disbursement of funds, and, if granted, would allow the recipient transit agency to expend its own moneys and to be eligible for future reimbursement from the program, under specified conditions. The bill would also require a recipient transit agency to provide additional information to the department to the extent funding is sought for capital projects.

~~Existing law requires recipient transit agencies whose service areas include disadvantaged communities, as defined, to expend at least 50% of the funding received from the program on projects and services that benefit disadvantaged communities.~~

~~This bill would instead provide for the Department of Transportation to require at least 50% of the total moneys available for the program to be expended on projects and services that benefit disadvantaged communities. The bill would require the department to ensure that investments benefiting disadvantaged communities are made within the jurisdiction of each regional transportation planning agency, and to report to the Legislature on the investments made in that regard by July 1, 2019, and at least every 3 years thereafter.~~

This bill would incorporate changes to Section 75230 of the Public Resources Code proposed by both this bill and AB 2090, which would become operative only if both bills are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 75230 of the Public Resources Code is amended to read:

75230. (a) The Low Carbon Transit Operations Program is hereby created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities.

(b) Funding for the program is continuously appropriated pursuant to Section 39719 of the Health and Safety Code from the Greenhouse Gas Reduction Fund established pursuant to Section 16428.8 of the Government Code.

(c) Funding shall be allocated by the Controller on a formula basis consistent with the requirements of this part and with Section 39719 of the Health and Safety Code, upon a determination by the Department of Transportation that the expenditures proposed by a recipient transit agency meet the requirements of this part and guidelines developed pursuant to this section, and that the amount of funding requested is currently available.

(d) A recipient transit agency shall demonstrate that each expenditure of program moneys allocated to the agency reduces greenhouse gas emissions.

(e) A recipient transit agency shall demonstrate that each expenditure of program moneys does not supplant another source of funds.

(f) Moneys for the program shall be expended to provide transit operating or capital assistance that meets any of the following:

(1) Expenditures that directly enhance or expand transit service by supporting new or expanded bus or rail services, new or expanded water-borne transit, or expanded intermodal transit facilities, and may include equipment acquisition, fueling, and maintenance, and other costs to operate those services or facilities.

(2) ~~Expenditures~~ *Operational expenditures* that increase transit mode share.

(3) Expenditures related to the purchase of zero-emission buses, including electric buses, or the installation of the necessary equipment and infrastructure to operate and support zero-emission buses.

(g) ~~(1) The department shall require~~ *For recipient transit agencies whose service areas include disadvantaged communities,*

1 *as identified pursuant to Section 39711 of the Health and Safety*
2 *Code, at least 50 percent of the total moneys received pursuant to*
3 *this chapter to shall be expended on projects or services that meet*
4 *the requirements of subdivisions (d), (e), and (f) and benefit the*
5 *disadvantaged communities, as identified pursuant to Section*
6 *39711 of the Health and Safety Code. communities, as identified*
7 *consistent with the guidance developed by the State Air Resources*
8 *Board pursuant to Section 39715.*

9 ~~(2) The department shall ensure that investments benefiting~~
10 ~~disadvantaged communities as identified pursuant to Section 39711~~
11 ~~of the Health and Safety Code are made within the jurisdiction of~~
12 ~~each regional transportation planning agency, as defined in Section~~
13 ~~99214 of the Public Utilities Code. The department,~~
14 ~~notwithstanding Section 10231.5 of the Government Code, shall~~
15 ~~report to the Legislature on or before July 1, 2019, and at least~~
16 ~~every three years thereafter, on the investments made that benefit~~
17 ~~disadvantaged communities and on the investments made that~~
18 ~~benefit other communities. The report shall be submitted pursuant~~
19 ~~to Section 9795 of the Government Code.~~

20 (h) The Department of Transportation, in coordination with the
21 State Air Resources Board, shall develop guidelines that describe
22 the methodologies that recipient transit agencies shall use to
23 demonstrate that proposed expenditures will meet the criteria in
24 subdivisions (d), (e), (f), and (g) and establish the reporting
25 requirements for documenting ongoing compliance with those
26 criteria.

27 (i) Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code does not apply to
29 the development of guidelines for the program pursuant to this
30 section.

31 (j) A recipient transit agency shall submit the following
32 information to the Department of Transportation before seeking a
33 disbursement of funds pursuant to this part:

34 (1) A list of proposed expense types for anticipated funding
35 levels.

36 (2) The documentation required by the guidelines developed
37 pursuant to this section to demonstrate compliance with
38 subdivisions (d), ~~(e), (f)~~, (e), (f), and (g).

39 (k) For capital projects, the recipient transit agency shall also
40 do all of the following:

1 (1) Specify the phases of work for which the agency is seeking
2 an allocation of moneys from the program.

3 (2) Identify the sources and timing of all moneys required to
4 undertake and complete any phase of a project for which the
5 recipient agency is seeking an allocation of moneys from the
6 program.

7 (3) Describe intended sources and timing of funding to complete
8 any subsequent phases of the project, through construction or
9 procurement.

10 (l) A recipient transit agency that has used program moneys for
11 ~~operating assistance to implement new or expanded transit service~~
12 *any type of operational assistance allowed by subdivision (f)* in a
13 previous fiscal year may use program moneys to continue ~~to~~
14 ~~operate~~ the same service *or program* in any subsequent fiscal year
15 if the agency can demonstrate that reductions in greenhouse gas
16 emissions can be realized.

17 (m) Before authorizing the disbursement of funds, the
18 Department of Transportation, in coordination with the State Air
19 Resources Board, shall determine the eligibility, in whole or in
20 part, of the proposed list of expense types, based on the
21 documentation provided by the recipient transit agency to ensure
22 ongoing compliance with the guidelines developed pursuant to
23 this section.

24 (n) The Department of Transportation shall notify the Controller
25 of approved expenditures for each recipient transit agency, and
26 the amount of the allocation for each agency determined to be
27 available at that time of approval.

28 (o) A recipient transit agency that does not submit an
29 expenditure for funding in a particular fiscal year may retain its
30 funding share, and may accumulate and utilize that funding share
31 in a subsequent fiscal year for a larger expenditure, including
32 operating assistance. The recipient transit agency must first specify
33 the number of fiscal years that it intends to retain its funding share
34 and the expenditure for which the agency intends to use these
35 moneys. A recipient transit agency may only retain its funding
36 share for a maximum of four years.

37 (p) A recipient transit agency may, in any particular fiscal year,
38 loan or transfer its funding share to another recipient transit agency
39 within the same region for any identified eligible expenditure under
40 the program, including operating assistance, in accordance with

1 procedures incorporated by the Department of Transportation in
2 the guidelines developed pursuant to this section, which procedures
3 shall be consistent with the requirement in subdivision (g).

4 (q) A recipient transit agency may apply to the Department of
5 Transportation to reassign any savings of surplus moneys allocated
6 under this section to the agency for an expenditure that has been
7 completed to another eligible expenditure under the program,
8 including operating assistance. A recipient transit agency may also
9 apply to the Department of Transportation to reassign to another
10 eligible expenditure any moneys from the program previously
11 allocated to the agency for an expenditure that the agency has
12 determined is no longer a priority for the use of those moneys.

13 (r) The recipient transit agency shall provide annual reports to
14 the Department of Transportation, in the format and manner
15 prescribed by the department, consistent with the internal
16 administrative procedures for *the* use of *the* fund proceeds
17 developed by the State Air Resources Board.

18 (s) The Department of Transportation and recipient transit
19 agencies shall comply with the guidelines developed by the State
20 Air Resources Board pursuant to Section 39715 of the Health and
21 Safety Code to ensure that the requirements of Section 39713 of
22 the Health and Safety Code are met to maximize the benefits to
23 disadvantaged communities as described in Section 39711 of the
24 Health and Safety Code.

25 (t) A recipient transit agency shall comply with all applicable
26 legal requirements, including the requirements of the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000)), and civil rights and environmental justice obligations
29 under state and federal law. Nothing in this section shall be
30 construed to expand or extend the applicability of those laws to
31 recipient transit agencies.

32 (u) The audit of public transportation operator finances already
33 required under the Transportation Development Act pursuant to
34 Section 99245 of the Public Utilities Code shall be expanded to
35 include verification of receipt and appropriate expenditure of
36 moneys from the program. Each recipient transit agency receiving
37 moneys from the program in a fiscal year for which an audit is
38 conducted shall transmit a copy of the audit to the Department of
39 Transportation, and the department shall make the audits available
40 to the Legislature and the Controller for review on request.

1 *SEC. 1.5. Section 75230 of the Public Resources Code is*
2 *amended to read:*

3 75230. (a) The Low Carbon Transit Operations Program is
4 hereby created to provide operating and capital assistance for transit
5 agencies to reduce greenhouse gas emissions and improve mobility,
6 with a priority on serving disadvantaged communities.

7 (b) Funding for the program is continuously appropriated
8 pursuant to Section 39719 of the Health and Safety Code from the
9 Greenhouse Gas Reduction ~~Fund~~ *Fund*, established pursuant to
10 Section 16428.8 of the Government Code.

11 (c) Funding shall be allocated by the Controller *on a formula*
12 *basis* consistent with the requirements of this part and with Section
13 39719 of the Health and Safety Code, upon a determination by the
14 Department of Transportation that the expenditures proposed by
15 a *recipient* transit agency meet the requirements of this part and
16 guidelines developed pursuant to ~~subdivision (f)~~, *and this section,*
17 *and that* the amount of funding requested ~~that~~ is currently available.

18 (d) *A recipient transit agency shall demonstrate that each*
19 *expenditure of program moneys allocated to the agency reduces*
20 *greenhouse gas emissions.*

21 (e) *A recipient transit agency shall demonstrate that each*
22 *expenditure of program moneys does not supplant another source*
23 *of funds.*

24 ~~(d) Moneys~~

25 (f) (1) *Moneys* for the program shall be expended to provide
26 transit operating or capital assistance that meets ~~all~~ *any* of the
27 ~~following criteria:~~ *following:*

28 ~~(1)~~

29 (A) *Expenditures that directly enhance or expand transit service*
30 *by* supporting new or expanded bus or rail services, new or
31 expanded water-borne transit, or expanded intermodal transit
32 facilities, and may include equipment acquisition, fueling, and
33 maintenance, and other costs to operate those services or facilities.

34 ~~(2) The recipient transit agency demonstrates that each~~
35 ~~expenditure directly enhances or expands transit service to~~

36 (B) *Operational expenditures that increase transit mode share.*

37 ~~(3) The recipient transit agency demonstrates that each~~
38 ~~expenditure reduces greenhouse gas emissions.~~

39 (C) *Expenditures related to the purchase of zero-emission buses,*
40 *including electric buses, or the installation of the necessary*

1 *equipment and infrastructure to operate and support zero-emission*
2 *buses.*

3 *(2) (A) Moneys for the program may additionally be expended*
4 *to support the operation of existing bus or rail service if all of the*
5 *following occur:*

6 *(i) The governing board of the transit agency declares a fiscal*
7 *emergency, as defined in paragraph (2) of subdivision (d) of*
8 *Section 21080.32, within 90 days prior to the agency requesting*
9 *the funds.*

10 *(ii) The expenditure of the requested funds is necessary to*
11 *sustain the transit agency's transit service in the fiscal year in*
12 *which the requested funds are to be expended.*

13 *(iii) The governing board of the transit agency would be*
14 *required to reduce or eliminate transit service if the requested*
15 *funds are not received.*

16 *(iv) The governing board makes a finding that a reduction in,*
17 *or elimination of, transit service would increase greenhouse gas*
18 *emissions because transit customers would choose other*
19 *less-efficient modes of transportation.*

20 *(v) The transit agency does not request funds over consecutive*
21 *funding years unless the transit agency has declared a fiscal*
22 *emergency in each year consistent with clause (i).*

23 *(vi) The transit agency does not request funds for more than*
24 *three consecutive funding years.*

25 *(B) Moneys allocated for the purpose of this paragraph shall*
26 *be expended to provide transit operating assistance that meets*
27 *both of the following criteria:*

28 *(i) The expenditures support current bus- or rail-service*
29 *operating costs and may include labor, fueling, maintenance, and*
30 *other costs to operate and maintain those services.*

31 *(ii) The recipient transit agency demonstrates that each*
32 *expenditure directly sustains transit service that would otherwise*
33 *be reduced or eliminated in the upcoming year if those funds were*
34 *not received.*

35 ~~(e)~~

36 *(g) For recipient transit agencies whose service areas include*
37 *disadvantaged-communities communities, as identified pursuant*
38 *to Section 39711 of the Health and Safety Code, at least 50 percent*
39 *of the total moneys received pursuant to this chapter shall be*
40 *expended on projects or services that meet requirements of*

1 ~~subdivision (d)~~ subdivisions (d), (e), and (f) and benefit the
2 disadvantaged communities, *as identified* consistent with the
3 guidance developed by the State Air Resources Board pursuant to
4 Section 39715 of the Health and Safety Code.

5 ~~(f)~~

6 (h) The Department of Transportation, in coordination with the
7 State Air Resources Board, shall develop guidelines that describe
8 the methodologies that recipient transit agencies shall use to
9 demonstrate that proposed expenditures will meet the criteria in
10 subdivisions ~~(d) and (e)~~ (d), (e), (f), and (g) and establish the
11 reporting requirements for documenting ongoing compliance with
12 those criteria.

13 ~~(g) Chapter~~

14 (i) *The Administrative Procedure Act (Chapter 3.5* (commencing
15 with Section 11340) of Part 1 of Division 3 of Title 2 of the
16 ~~Government Code Code~~) does not apply to the development of
17 guidelines for the program pursuant to this section.

18 ~~(h)~~

19 (j) A *recipient* transit agency shall submit the following
20 information to the Department of Transportation before seeking a
21 disbursement of funds pursuant to this part:

22 (1) A list of proposed expense types for anticipated funding
23 levels.

24 (2) The documentation required by the guidelines developed
25 pursuant to ~~subdivision (f)~~ *this section* to demonstrate compliance
26 with subdivisions ~~(d) and (e)~~ (d), (e), (f), and (g).

27 (k) *For capital projects, the recipient transit agency shall also*
28 *do all of the following:*

29 (1) *Specify the phases of work for which the agency is seeking*
30 *an allocation of moneys from the program.*

31 (2) *Identify the sources and timing of all moneys required to*
32 *undertake and complete any phase of a project for which the*
33 *recipient agency is seeking an allocation of moneys from the*
34 *program.*

35 (3) *Describe intended sources and timing of funding to complete*
36 *any subsequent phases of the project, through construction or*
37 *procurement.*

38 (l) *A recipient transit agency that has used program moneys for*
39 *any type of operational assistance allowed in subdivision (f) in a*
40 *previous fiscal year may use program moneys to continue the same*

1 *service or program in any subsequent fiscal year if the agency can*
2 *demonstrate that reductions in greenhouse gas emissions can be*
3 *realized.*

4 ~~(i)~~

5 *(m) Before authorizing the disbursement of funds, the*
6 ~~department, Department of Transportation~~, in coordination with
7 the State Air Resources Board, shall determine the eligibility, in
8 whole or in part, of the proposed list of expense ~~types~~, *types* based
9 on the documentation provided by the recipient transit agency to
10 ensure ongoing compliance with the guidelines developed pursuant
11 to ~~subdivision (f)~~. *this section.*

12 ~~(j)~~

13 *(n) The ~~department~~ Department of Transportation shall notify*
14 *the Controller of approved expenditures for each recipient transit*
15 *agency, and the amount of the allocation for each ~~transit~~ agency*
16 *determined to be available at that time of approval.*

17 *(o) A recipient transit agency that does not submit an*
18 *expenditure for funding in a particular fiscal year may retain its*
19 *funding share, and may accumulate and utilize that funding share*
20 *in a subsequent fiscal year for a larger expenditure, including*
21 *operating assistance. The recipient transit agency must first specify*
22 *the number of fiscal years that it intends to retain its funding share*
23 *and the expenditure for which the agency intends to use these*
24 *moneys. A recipient transit agency may only retain its funding*
25 *share for a maximum of four years.*

26 *(p) A recipient transit agency may, in any particular fiscal year,*
27 *loan or transfer its funding share to another recipient transit*
28 *agency within the same region for any identified eligible*
29 *expenditure under the program, including operating assistance,*
30 *in accordance with procedures incorporated by the Department*
31 *of Transportation in the guidelines developed pursuant to this*
32 *section, which procedures shall be consistent with the requirement*
33 *in subdivision (g).*

34 *(q) A recipient transit agency may apply to the Department of*
35 *Transportation to reassign any savings of surplus moneys allocated*
36 *under this section to the agency for an expenditure that has been*
37 *completed to another eligible expenditure under the program,*
38 *including operating assistance. A recipient transit agency may*
39 *also apply to the Department of Transportation to reassign to*
40 *another eligible expenditure any moneys from the program*

1 *previously allocated to the agency for an expenditure that the*
2 *agency has determined is no longer a priority for the use of those*
3 *moneys.*

4 ~~(k)~~

5 (r) The recipient transit agency shall provide annual reports to
6 the Department of Transportation, in the format and manner
7 prescribed by the department, consistent with the internal
8 administrative procedures for *the use of the fund proceeds*
9 developed by the State Air Resources Board.

10 ~~(t)~~

11 (s) The Department of Transportation and recipient transit
12 agencies shall comply with the guidelines developed by the State
13 Air Resources Board pursuant to Section 39715 of the Health and
14 Safety Code to ensure that the requirements of Section 39713 of
15 the Health and Safety Code are met to maximize the benefits to
16 disadvantaged communities as described in communities, as
17 identified pursuant to Section 39711 of the Health and Safety
18 Code.

19 (t) A recipient transit agency shall comply with all applicable
20 legal requirements, including the requirements of the California
21 Environmental Quality Act (Division 13 (commencing with Section
22 21000)), and civil rights and environmental justice obligations
23 under state and federal law. Nothing in this section shall be
24 construed to expand or extend the applicability of those laws to
25 recipient transit agencies.

26 (u) The audit of public transportation operator finances already
27 required under the Transportation Development Act pursuant to
28 Section 99245 of the Public Utilities Code shall be expanded to
29 include verification of receipt and appropriate expenditure of
30 moneys from the program. Each recipient transit agency receiving
31 moneys from the program in a fiscal year for which an audit is
32 conducted shall transmit a copy of the audit to the Department of
33 Transportation, and the department shall make the audits available
34 to the Legislature and the Controller for review on request.

35 SEC. 2. Section 75231 is added to the Public Resources Code,
36 to read:

37 75231. (a) A recipient transit agency under the program created
38 pursuant to Section 75230 may apply to the Department of
39 Transportation for a letter of no prejudice for any eligible
40 expenditures under the program, including operating assistance,

1 for which the department has authorized a disbursement of funds.
2 If approved by the department, the letter of no prejudice shall allow
3 the recipient transit agency to expend its own moneys for the
4 expenditures and to be eligible for future reimbursement from
5 moneys available for the program.

6 (b) The amount expended under subdivision (a) shall be
7 reimbursed by the state from moneys available for the program if
8 all of the following conditions are met:

9 (1) The expenditures for which the letter of no prejudice was
10 requested have commenced, and any regional or local expenditures,
11 if applicable, have been incurred.

12 (2) The expenditures made by the recipient transit agency are
13 eligible under the program. If expenditures made by the recipient
14 transit agency are determined to be ineligible, the state has no
15 obligation to reimburse those expenditures.

16 (3) The recipient transit agency complies with all applicable
17 legal requirements for the expenditures, including the requirements
18 of the California Environmental Quality Act (Division 13
19 (commencing with Section 21000)), and civil rights and
20 environmental justice obligations under state and federal law.
21 Nothing in this section shall be construed to expand or extend the
22 applicability of those laws to recipient transit agencies.

23 (4) There are moneys in the Greenhouse Gas Reduction Fund
24 designated for the program and from the recipient transit agency's
25 formula allocation share as determined pursuant to subparagraph
26 (B) of paragraph (1) of subdivision (b) of Section 39719 of the
27 Health and Safety Code that are sufficient to make the
28 reimbursement payment.

29 (c) The recipient transit agency and the Department of
30 Transportation shall enter into an agreement governing
31 reimbursement as described in this section. The timing and final
32 amount of reimbursement shall be dependent on the terms of the
33 agreement and the availability of moneys in the Greenhouse Gas
34 Reduction Fund for the program.

35 (d) The Department of Transportation, in consultation with
36 recipient public transit agencies, may develop guidelines to
37 implement this section.

38 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
39 *Section 75230 of the Public Resources Code proposed by both this*
40 *bill and Assembly Bill 2090. It shall only become operative if (1)*

1 *both bills are enacted and become effective on or before January*
2 *1, 2017, (2) each bill amends Section 75230 of the Public*
3 *Resources Code, and (3) this bill is enacted after Assembly Bill*
4 *2090, in which case Section 1 of this bill shall not become*
5 *operative.*

O